

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANGELO DAVID PARKS,

Defendant-Appellant.

UNPUBLISHED

September 13, 2007

No. 271291

Wayne Circuit Court

LC No. 06-000900-01

Before: Cavanagh, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions for first-degree home invasion, MCL 750.110a(2), and aggravated stalking, MCL 750.411i. Defendant was sentenced, as a third habitual offender, MCL 769.11, to 13 to 40 years' imprisonment for his first-degree home invasion conviction and one to five years' imprisonment for his aggravated stalking conviction. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the evidence presented at trial was insufficient to sustain his first-degree home invasion conviction. We disagree.

When reviewing a claim of insufficiency of the evidence, this Court reviews the record de novo. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). Evidence is sufficient if, when viewed in the light most favorable to the prosecution, a rational fact-finder could determine the essential elements of the crime were proved beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002); *People v Shipley*, 256 Mich App 367, 374-375; 662 NW2d 856 (2003). Circumstantial evidence and reasonable inferences can be sufficient to sustain a conviction. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

In order to sustain a first-degree home invasion conviction, the prosecution must show that defendant, while a person was lawfully in a dwelling: (1) broke into the dwelling with intent to commit a felony, larceny, or assault in the dwelling, (2) entered the dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or (3) broke into the dwelling or entered the dwelling without permission and, at any time while entering, being present in, or exiting the dwelling, committed a felony, larceny, or assault. MCL 750.110a; *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004); *People v Musser*, 259 Mich App 215, 222; 673 NW2d 800 (2003).

In this case, the court found defendant guilty of first-degree home invasion because it determined that defendant intended to commit first-degree criminal sexual conduct upon Tia McPike-McDyess. The elements of first-degree criminal sexual conduct are that the defendant: (1) engages in sexual penetration with the victim, (2) causes personal injury to the victim, and (3) uses force or coercion to accomplish the sexual penetration. MCL 750.520b; *People v Nickens*, 470 Mich 622, 628-629; 685 NW2d 657 (2004). The evidence does not support using first-degree criminal sexual conduct as the underlying felony to support the home invasion conviction because, while the evidence showed that defendant intended to have forced sex with McPike-McDyess, there is no evidence in the record to show that defendant intended to cause personal injury to McPike-McDyess while he was in her home.

However, while the elements of first-degree criminal sexual assault are not met here, any other degree of criminal sexual conduct will suffice to support a first-degree home invasion conviction. MCL 750.110a. But, like first-degree CSC, second-degree CSC also includes a requirement of personal injury, which is not met. MCL 750.520c(1)(f). Additionally, this Court has recognized that all criminal sexual conduct crimes are actually a specialized or aggravated form of assault and, accordingly, held that fourth-degree criminal sexual conduct constitutes an assault for the purposes of the home invasion statute. *Musser, supra*, pp 215, 223-224. Under MCL 750.520e(1), a person who engages in sexual contact that is accomplished by force or coercion is guilty of fourth-degree criminal sexual conduct. Sexual contact includes an intentional touching of the victim's intimate parts for the purpose of sexual arousal or gratification. *People v Capriccioso*, 207 Mich App 100, 103; 523 NW2d 846 (1994).

There is insufficient evidence to show that defendant intended to cause personal injury to McPike-McDyess, and therefore, insufficient evidence to use first or second-degree CSC as the underlying felony for first-degree home invasion. However, there is sufficient evidence to show that defendant intended to commit some form of criminal sexual conduct. The elements common to third and fourth-degree criminal sexual conduct include: (1) sexual contact (fourth) or sexual penetration (third), and (2) force or coercion. MCL 750.520d(1)(b); MCL 750.520e(1). Therefore, defendant's first-degree home invasion conviction can be upheld as long as he intended to have sexual contact or sexual penetration with McPike-McDyess by force or coercion. Both of these elements are met in this case. It is abundantly clear from defendant's actions and conversations that he intended to have either forced sexual contact or sexual penetration with McPike-McDyess. On the tapes, he frequently expressed his desire for sex or sexual intercourse, and made other sexually explicit comments.

Defendant argues on appeal that his comments and actions only expressed his desire for consensual sex, and not an intention to commit criminal sexual conduct. However, intent can be inferred from defendant's acts and from surrounding circumstances. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). McPike-McDyess told defendant she was willing to have sex with him. In response, defendant told her he did not believe her, or asked if she called the police. At one point, defendant even said he would not come over because McPike-McDyess might shoot him. Additionally, defendant broke into McPike-McDyess' house a second time. He did not ring the doorbell or tell her that he was coming over for sex. Instead, he tried to break in through her daughter's bedroom window. When McPike-McDyess tried to shut the window to keep defendant out, he did not walk away, but instead threw something at her and physically threatened her. Defendant's actions do not show that he expected consensual sex. It can be

inferred from defendant's words and actions, and from the circumstances generally, that defendant intended to commit criminal sexual conduct with McPike-McDyess when he broke into her house.

The evidence was sufficient to sustain defendant's conviction, i.e., defendant unlawfully broke into the home while someone was lawfully present in it with the intent to commit criminal sexual conduct inside the home. The evidence, viewed as a whole and in a light most favorable to the prosecution, was sufficient for a rational fact-finder to conclude that defendant committed first-degree home invasion.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto